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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 SABAT SEMAAN, ) No. CV 06-03308-VBK  
12 )  
13 Plaintiff, ) ORDER AWARDING ATTORNEY FEES  
14 ) PURSUANT TO 42 U.S.C. §406(b)  
15 v. )  
16 )  
17 MICHAEL J. ASTRUE, )  
18 Commissioner of Social )  
19 Security, )  
20 )  
21 Defendant. )  
22 \_\_\_\_\_ )  
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18 I

19 INTRODUCTION

20 On February 27, 2007, United States Magistrate Judge Victor B.  
21 Kenton ordered that Plaintiff's application for Social Security  
22 benefits be remanded to the Defendant Commissioner for further  
23 proceedings. The parties agree that the Social Security  
24 Administration awarded Plaintiff \$43,853.25 in back benefits. (See  
25 also Exhibit ["Ex."] 3 to Motion.) Now pending before the Court is  
26 the petition of Plaintiff's counsel, Lawrence D. Rohlfing, for  
27 attorney fees in the amount of \$14,500 for his representation of  
28

1 Plaintiff in this matter.<sup>1</sup>

2 Defendant filed a response which neither opposes nor supports  
3 the petition. Rather, Defendant's position is only that the  
4 requested net fee of \$9,844.38 (i.e., \$14,500.00 less the \$4,655.62  
5 previously received by Plaintiff's counsel under the Equal Access  
6 to Justice Act ["EAJA"]) must be "reasonable" under the guidelines  
7 enunciated in Gisbrecht v. Barnhart, 535 U.S. 789, 122 S. Ct. 1817,  
8 152 L. Ed. 2d 996 (2002). After careful consideration, the court  
9 finds in this case that \$14,500.00 for 24.6 hours of work by  
10 Plaintiff's counsel and 6.9 hours of paralegal work is "reasonable,"  
11 under the standards enunciated in Gisbrecht.

## 12 13 II

### 14 DISCUSSION AND ANALYSIS

15 Plaintiff's counsel brings this petition pursuant to 42 U.S.C.  
16 §406(b), which provides in relevant part:

17 Whenever a court renders a judgment favorable to a  
18 claimant under this subchapter who was represented  
19 before the court by an attorney, the court may  
20 determine and allow as part of its judgment a  
21 reasonable fee for such representation, not in excess  
22 of 25 percent of the total of the past-due benefits to  
23 which the claimant is entitled by reason of such  
24 judgment.

25 In Gisbrecht, supra, the Supreme Court resolved a division  
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27 <sup>1</sup> This amount would be offset by EAJA fees of \$4,655.62  
28 previously awarded, which amount would be paid directly to Plaintiff  
by Plaintiff's counsel from the gross award of fees.

1 among the federal circuits on the appropriate method of calculating  
2 attorney fees under §406(b). Rejecting the "lodestar method" which  
3 several of the circuits (including the Ninth Circuit) had been  
4 applying, the Supreme Court held:

5 [Section] 406(b) does not displace contingent-fee  
6 agreements as the primary means by which fees are set  
7 for successfully representing Social Security benefits  
8 claimants in court. Rather, §406(b) calls for court  
9 review of such arrangements as an independent check,  
10 to assure that they yield reasonable results in  
11 particular cases. Congress has provided one boundary  
12 line: Agreements are unenforceable to the extent that  
13 they provide for fees exceeding 25 percent of the  
14 past-due benefits... Within the 25 percent  
15 boundary,...the attorney for the successful claimant  
16 must show that the fee sought is **reasonable for the**  
17 **services rendered.**

18 122 S.Ct. at 1828 (emphasis added).  
19

20 In determining whether the award of \$14,500.00 sought by  
21 Plaintiff's counsel is "reasonable for the services rendered" here,  
22 the Court has considered a number of factors. Several of these  
23 factors fall in favor of Plaintiff's counsel.

24 First, under the terms of the contingent fee agreement between  
25 Plaintiff and Plaintiff's counsel, Plaintiff's counsel would be  
26 entitled to fees corresponding to 25% of the back benefits awarded.  
27 Plaintiff agreed to the 25% contingency and the \$14,500.00 award  
28 sought represents less than the agreed upon maximum contingency

1 amount. The Court has no basis for finding that there was any fraud  
2 or overreaching by counsel in the making of the contingent fee  
3 agreement with Plaintiff.

4 Second, the \$14,500.00 award sought by Plaintiff's counsel is  
5 not in excess of the 25% statutory limit. Indeed, as stated, the  
6 fees sought amount to 25% of Plaintiff's recovery and comport with  
7 the terms of the contingent fee agreement between Plaintiff and  
8 counsel.

9 Third, there is no excessive delay attributable to counsel  
10 which would unduly increase the back benefits accumulated during the  
11 pendency of the case in court.

12 In this case, the Court finds that the complexity of the issues  
13 raised is also a significant factor, as is the skill of Plaintiff's  
14 counsel in identifying and vigorously litigating these meritorious  
15 issues.

### 16 17 III

#### 18 CONCLUSION

19 Based upon the foregoing considerations, the Court finds and  
20 concludes that the \$14,500.00 in fees sought by Plaintiff's counsel  
21 is reasonable. The petition for \$14,500.00 in gross attorney fees  
22 pursuant to 42 U.S.C. §406(b) is **GRANTED**. Upon payment by the  
23 Commissioner of such amount out of the withheld back benefits,

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1 Plaintiff's counsel shall refund to Plaintiff the lesser EAJA fee  
2 of \$4,644.62 (which the Defendant has already paid to Plaintiff's  
3 counsel).

4 **IT IS SO ORDERED.**

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6 DATED: April 30, 2008

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/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE